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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

MRS. MARTHA BAILEY CRICHTON,

Petitioner

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE, and POWELL CRICHTON, JR.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

R. L. CURRY, III
THOS. W. LEIGH
P. O. Box 1671
Monroe, Louisiana 71201
— Attorneys for Petitioner

THEUS, GRISHAM, DAVIS & LEIGH
400 South Grand Street
Monroe, Louisiana 71201
OF COUNSEL

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This is a petition by MRS. MARTHA BAILEY CRICHTON for a writ of certiorari to review a decision of the Court of Appeal for the Second Circuit of Louisiana affirming a judgment entered in the above case by the 26th District Court for Webster Parish, Louisiana, or, in the alternative, to review the order and judgment of the Supreme Court of Louisiana dated April 20, 1970, by which that Court refused to issue a writ of certiorari or review.

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeal for the Second Circuit, State of Louisiana, dated January 6, 1970 (rehearing denied March 3, 1970) which is herein sought to be reviewed is reported in **232 So. 2d 109.** Application to the Supreme Court of Louisiana for a writ of certiorari to review this opinion was refused by that Court on April 20, 1970. Such refusal is not yet reported.

Germane also to this petition are the opinion and decision of the New York Surrogate dated March 9, 1966 **(In Re Crichton's Will, 49 Misc. 2d 405, 267 N. Y. S. 2d 706)** and his final order dated March 17, 1966, and the affirming opinion of the New York Court of Appeal **(In Re Estate of Crichton, 20 N. Y. 2d 124, 281 N. Y. S. 2d 811, 228 N. E. 2d 799.)**

Pursuant to **Paragraph 1 (i) of Rule 23 of the Rules of this Court,** copies of: the judgment entered in the District Court (Appendix, pages 1a-15a); the opinion of the Court of Appeal sought to be reviewed (Appendix, pages 16a-31a); the order denying petition for rehearing (Appendix, page 32a); the order of Supreme Court of Louisiana denying certiorari (Appendix, page 33a); the opinion and decision of the New York Surrogate dated March 9, 1966 (Appendix, Pages 34a-47a); final order of the New York Surrogate dated March 17, 1966 (Appendix, pages 48a-53a); and the affirming opinion of the New York Court of

Appeal (Appendix, pages 54a-72a), are set forth in a separately bound appendix.

JURISDICTIONAL STATEMENT

The decision sought to be reviewed was entered by the Court of Appeal for the Second Circuit, State of Louisiana, on January 6, 1970; a rehearing was refused by that Court on March 3, 1970; and petitioner's application to the Supreme Court of Louisiana for a writ of certiorari to review the judgment of the Court of Appeal was refused on April 20, 1970. By the refusal of the Supreme Court (the highest Court in Louisiana) to review the opinion of the Court of Appeal, that judgment became final on April 20, 1970.

Jurisdiction of this Court to review the judgment complained of by means of a writ of certiorari to the Court of Appeal for the Second Circuit of the State of Louisiana or in the alternative to the Supreme Court of Louisiana is conferred by **28 U. S. C. Sec. 1257, Paragraph (3).**

QUESTIONS PRESENTED

Is it consistent with the Due Process and Equal Protection clauses of the Fourteenth Amendment for property rights accorded to a non-resident widow by the laws of the forum state, in intangible movables situated within the forum state and under the jurisdiction of its Courts, to be divested and ownership thereof transferred to the succession of the deceased

husband by according full faith and credit to an adverse foreign judgment?

Is it consistent with the Due Process and Equal Protection clauses of the Fourteenth Admendment for a forum court to be concluded by a foreign court's assumption of jurisdiction over intangible movables situated in the forum state and protected against removal therefrom by the injunctive process of the forum court?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of the United States Constitution which are here involved are:

Article IV, Section 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. * * * "

Amendment XIV, Section 1:

" * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Powell Crichton, a native of Louisiana, migrated to New York in 1910, became a member of the New York Bar, resided there for the remainder of his life and died testate in that State on November 15, 1962. He was married twice and sired a son and a daughter

by each marriage. His first wife died in 1923 and he was married the second time in 1925 to Mrs. Martha Bailey Crichton, who survives him and is the Petitioner herein.[1]

Respondents are Mrs. Gloria Crichton McGehee and Powell Crichton, Jr., the children of the first marriage.[2]

By Mr. Crichton's will, certain trusts were created, the income from which is payable to his four children in varying proportions. No provision was made for petitioner, his surviving widow, nor did petitioner exercise any right to take against the will as permitted by the laws of New York.

Following Mr. Crichton's death, his will was admitted to probate in the Surrogate's Court of Westchester County, New York and Miss Margaret Hemingway, the testamentary executrix named therein, qualified in that court on February 11, 1963. Later, ancillary probate proceedings were instituted in the 26th District Court of Webster Parish, Louisiana, and ancillary letters testamentary were issued to the domiciliary executrix on April 28, 1964.

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1 Petitioner and decedent were separated in 1935 and lived separate and apart until his death. That fact, however, is immaterial to the questions here presented, since it does not affect her rights under the community property laws of Louisiana. See **Joffrion v. Bordelon 14 La. Ann. 618.**

2 Kate Crichton and Edward Bailey Crichton, issue of the second marriage, were made parties to this litigation, but have acquiesced in the claims of their mother, Petitioner herein.

Mr. Crichton's estate consists principally of intangible movables (bank deposits, U. S. Treasury bonds, corporate stocks, etc,), **all of which are situated in Louisiana and all of which were acquired during the period of his marriage to Petitioner.**

Article 2400 of the Revised Civil Code of Louisiana provides as follows:

> "All property acquired in this state by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this state."

and consistent with the provisions of this Article, the intangible personal properties (which are the subject of this litigation) were inventoried as belonging to the community of acquets and gains existing between decedent and petitioner as his surviving widow.[3]

Thereafter, petitioner, as decedent's surviving widow in community, filed a petition in the Louisiana Court asking to be placed in possession of her interest in the community property. She also sought a temporary restraining order and a preliminary injunction to prevent the removal of these properities from the State. Respondents appeared through counsel and excepted to the jurisdiction of the Louisiana courts to

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[3] Certain items of real estate were also inventoried as community property but the New York Court made no attempt to adjudicate title thereto.

pass upon the ownership of the intangible movable properties described in the inventory, on the grounds that such properties had their situs at the domicile of the decedent in New York.

At a hearing on August 11, 1965, Petitioner's request for a preliminary injunction was granted, and on December 8, 1965, an order was entered overruling Respondents' exception to the jurisdiction. On January 4, 1966, judgment was signed overruling Respondents' exceptions and granting Petitioner a permanent injunction as previously prayed for. The case was fixed for trial on April 14, 1966.

In the meantime, Respondents were carrying forward litigation with the domiciliary executrix in the Surrogate's Court of Westchester County, New York. In response to a demand filed by Mrs. Gloria Crichton MeGehee, one of the Respondents, the domiciliary executrix filed an intermediate account in the New York Court on September 20, 1965 in which she set forth as unpaid Petitioner's claim for one-half of the community property amounting to some $156,000.00.

On December 2, 1965 Mrs. McGehee filed objections to the allowance of the community property claim on the grounds that 1) Louisiana's community property laws were inapplicable, 2) under Louisiana law the claim was invalid, and 3) the widow had no

rights except to take against the will by intestacy, a right which she had not chosen to exercise.

Petitioner appeared in that court and filed objection to the inclusion in the account of items being accounted for in Louisiana on the grounds that 1) they were being held by Margaret Hemingway as ancillary executrix in Louisiana and had not come into her hands as domiciliary executrix ,and 2) the Louisiana courts had enjoined the ancillary executrix from removing or disposing of those items.

On a motion for partial summary judgment filed by Mrs. McGehee, the Surrogate held that Louisiana law had no application and that Petitioner, as decedent's widow, acquired no community property rights in decedent's personal property. He refused to recognize the applicability of **Louisiana's Revised Civil Code, Article 2400,** to the incorporeal movables here involved and sustained Mrs. McGehee's objection to the allowance of Petitioner's claim for community property. This judgment, rendered on March 17, 1966, was subsequently affirmed by the Supreme Court, Appellate Division (Second Department)[4] and by the Court of Appeals of New York, which is the highest court of that State.[5]

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[4] **In the matter of the Will of Powell Crichton, Deceased (1966) 26 A. D. 2d 639, 272 N. Y. S. (2d) 987.**

[5] **In Re Estate of Crichton (1967) 20 N. Y. 2d 124, 281 N. Y. S. 2d 811, 228 N. E. 2d 799.**

Thereafter, by motion for partial summary judgment filed on March 23, 1966 some three weeks before the trial date which had been fixed by the Louisiana court, Respondents sought recognition of the New York Surrogate's decree in the ancillary proceedings in Louisiana, claiming full faith and credit for this decree under **Article IV of Section 1 of the United States Constitution.** The Trial Court denied that motion on May 4, 1966 and supervisory writs were denied by the Louisiana Court of Appeal for the Second Circuit and by the Louisiana Supreme Court[6] on the grounds that an adequate remedy existed by appeal.

The Louisiana litigation was refixed for trial and tried on December 12, 1966 and was submitted on briefs to be filed by both parties litigant. While the Louisiana case was being held under advisement, the New York case was affirmed by the New York Court of Appeal on June 1, 1967, and on February 13, 1969, some twenty months later, the Louisiana Court rendered judgment in which it reversed its previous ruling on Respondents' motion for summary judgment and held that the judgment of the New York Surrogate, as affirmed by the New York Court of Appeal, was entitled to full faith and credit under the United States Constitution and constituted res judicata of all issues involved in this litigation.

On appeal, the Louisiana Court of Appeal for the

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6 **249 La. 571, 187 So. (2d) 738.**

Second Circuit held on January 6, 1970 that:

> " . . . we are bound to accord full faith and credit to the judgment of the Court of Appeal of the State of New York as a final decision between the parties regardless of whether or not the Courts of Louisiana would have reached the same results."

The Court added, however that:

> "The full faith and credit clause, however, does not require that we agree with another court's interpretation of one of our statutes. The interpretation placed upon Article 2400 is incorrect and the conclusion reached is repugnant to our law.",

and concluded:

> "In view of the clear language of Article 2400 and the preceding authorities, we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana law. However, as a consequence of the Full Faith and Credit clause of the Federal Constitution, we are bound to hold that the judgment of the State of New York is entitled to res judicata effect in Louisiana."

After a rehearing had been refused by the Court of Appeal — with the Presiding Judge dissenting — application for review was made to and denied by the Supreme Court.

RAISING OF FEDERAL QUESTIONS

The federal questions herein sought to be reviewed are inherent in Respondents' reliance upon the Full Faith and Credit clause of the United States Constitution to divest Petitioner's ownership of an interest in the properties here in dispute.

This constitutional provision was invoked by Respondents in the court of first instance in Louisiana by means of their motion for partial summary judgment filed following the rendition by the Surrogate of Westchester County, New York of his judgment of March 17, 1966.

The federal questions then at issue were decided in favor of Petitioner, and the trial Court's later reversal of this holding and its final sustaining of Respondents' motion for summary judgment were made without previous warning to Petitioner and without opportunity given for re-argument of these constitutional issues.

On appeal to the Court of Appeal for the Second Circuit, Petitioner in her brief raised the point of due process in the following language:

> " . . . it is clear that if the law in New York can be invoked to transfer from Mrs. Crichton to the estate of her deceased husband, her one-half interest in the revenues from land in Louisiana which are hers under the law of this State, then the New York law, in effect, deprives her of rights vested in her under the law of Louisiana without any semblance of due process of law."

In Petitioner's application for rehearing made to the Court of Appeal, Petitioner re-urged these constitutional questions and in her brief in support of that application it was pointed out:

> "It is thus clear that for this Court to accord full faith and credit to the New York judgment here relied upon by appellees, and in so doing to divest Mrs. Crichton of the owership

and enjoyment of property to which she is entitled under the substantive laws of Louisiana, is nothing short of confiscation, effectively deprives this appellant of her property without due process of law, and denies to her the equal protection of the laws, all in contravention of the Fourteenth Amendment to the United States Constitution."

The conflict with the Due Process clause of the Constitution resulting from the Court's application of the Full Faith and Credit clause was urged upon the Supreme Court of Louisiana in an assignment of error made in Petitioner's application to that Court for a writ of certiorari in the following language:

"The Court of Appeal erred inter alia: . . . . 4) in permitting Mrs. Crichton to be deprived of her property without due process of law and in denying to her the equal protection of the laws — all in violation of the Fourteenth Amendment to the Constitution of the United States."

Although the opinion of the Court of Appeal appearing in the Appendix does not specifically pass upon the constitutional questions here sought to be reviewed, nevertheless these questions were timely and properly raised at every stage of this litigation so as to give this Court jurisdiction to review the judgment on writ of certiorari.

REASONS FOR GRANTING THE WRIT

Presented here is a direct conflict between the Full Faith and Credit clause of the United States Constitution, as it has been applied in the opinion sought to be reviewed, and the Due Process and Equal Protection clauses of the Fourteenth Amendment.

Is it consistent with due process for a forum court blindly to accept a foreign court's assumption of jurisdiction over the res and accord full faith and credit to such court's judgment which divests property rights previously vested by the law of the forum state?

In the opinion here sought to be reviewed, the Louisiana Court of Appeal held that by virtue of the Full Faith and Credit clause of the Constitution, the judgment of the New York Court denying Petitioner any rights under the community property laws of Louisiana and under **Article 2400 of the Louisiana Revised Civil Code,** is entitled to res judicata effect in the Louisiana Court.

At the same time the Court held that under **Article 2400 of the Louisiana Revised Civil Code,** the properties in litigation, having been acquired in this State during the existence of the marriage between Petitioner and her deceased husband, were subject to the same provisions of law which regulate the community of acquets and gains between citizens of Louisiana, and as a consequence that Petitioner was entitled as a substantive right to a one-half interest therein.

These holdings are mutually irreconcilable.[7]

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[7] It will not do to say, as did Judge Dixon in his concurring opinion, that the former holding is decisive of the case, and that the latter holding is merely dictum. For if the result which would be reached under the Louisiana law were not different from that

Here, the Louisiana court's blind acceptance of the New York court's assumption of jurisdiction over the res is in direct conflict with decisions of this court.

In **Clark v. Williard (1935) 294 U. S. 211, 79 L. Ed. 865, 55 S. Ct. 356, 98 A.L.R. 347,** this Court observed (98 A.L.R. p. 351):

> " * * Iowa may say that one who is a liquidator with title, appointed by her statutes, shall be so recognized in Montana, with whatever rights and privileges accompany such recognition according to Montana law. * * * **Iowa may not say, however, that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets,** and carry over into another state the rule of distribution prescribed by the statutes of the domicile." (Emphasis supplied)

In **Hanson v. Denckla (1958) 357 U. S. 235, 2 L. Ed. 2d 1283, 75 S. Ct. 1228,** this Court held (2 L. Ed. 2d p. 1293):

> "Founded on physical power, * * the in rem jurisdiction of a state court is limited by the extent of its power and by the coordinate authority of sister states. The basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum State. * * Tangible property poses no problem for the application of this rule, but the situs of intangibles is often a matter of controversy. In considering restrictions on the power to tax, this Court has concluded that 'jurisdiction' over intangible property is not

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reached by the New York courts, there would be no occasion for the application of the Full Faith and Credit clause. And if, as held by the marjority of the Court, Article 2400 subjects the property of these two married persons, acquired in Louisiana, to the same provisions of law which regulate the community of acquets and gains between citizens of Louisiana, then Petitioner must be accorded the same rights in community property as are enjoyed by citizens of Louisiana.

limited to a single State * * Whether the type of 'jurisdiction' with which this opinion deals may be exercised by more than one State we need not decide. The parties seem to assume that **the trust assets that form the subject matter of this action were located in Delaware and not in Florida.** We can see nothing in the record contrary to that assumption, or sufficient to establish a situs in Florida." (Emphasis supplied)

If it were simply a question of determining **prospectively** the issue of title to these intangible movables as betwen Petitioner and the succession of her deceased husband, full faith and credit might constitutionally have been accorded to the New York Court's determination of that issue, and the question presented by this application would not have arisen.

But that is not the case here.

As noted by the Surrogate,[8] petitioner's appearance in his court was for the purpose of objecting to the inclusion in the Domiciliary Administrator's account of the items being accounted for in Louisiana on the grounds "that (1) they are held by Margaret S. Hemingway solely as ancillary executrix in Louisiana and have not come into her hands as domiciliary executrix, and (2) the Louisiana court has enjoined the ancillary executrix from removing or disposing of those items."

Under the law of Louisiana the ownership of a one-half interest in the community property vests in

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8 See Appendix, page 37a.

the wife immediately upon its acquisition;[9] and while under Louisiana law the husband, as head and master of the community retains the right to manage and even alienate assets of the community, nevertheless the death of Powell Crichton effected a dissolution of the community and vested in Petitioner the further right to possession of the community interest of which she already enjoyed the ownership.

Thus, it is clear that the Full Faith and Credit clause as applied by the Louisiana Court of Appeal has been made to operate **retroactively** and to divest Petitioner of rights of ownership and possession in these properties which had already vested in her under the law of the forum state where the properties were, in fact, situated.

Clearly, the result which has here been reached with respect to these intangible movable properties could not have been reached if the properties had been immovables. This was recognized by the New York Court and the Louisiana immovables were excluded from its consideration.

Whether such a result is precluded with respect

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9 See **Succession of Helis (1954) 226 La. 133, 75 So. (2d) 221,** wherein it was held that:

"Despite loose expressions in some of the decisions to the contrary, ever since Dixon v. Dixon's Executors, 4 La. 188, was decided in 1832, **title to one-half of the community property from the very moment of its acquisition is, under our civil law system, vested in the wife** irregardless in whose name acquired." (Emphasis supplied)

to intangible movables situated in the forum state has not, so far as we have been able to determine, been heretofore decided by this Court.

The question here presented is one of vital concern to the public.

For, if the Full Faith and Credit clause of the Constitution can be applied in one case so as to effect a divestiture of vested rights in intangible movable properties and to deny to a non-resident rights which under the law of the forum state are accorded to domiciliaries, then that clause can be so applied in other cases and the guarantees afforded by the Fourteenth Amendment will be rendered nugatory.

In **Pink v. A. A. A. Highway Express, Inc. (1941) 314 U. S. 201, 86 L. Ed. 152,** this Court, in discussing the application of the Full Faith and Credit clause of the Constitution, pointed out (p. 210):

> "It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others. But the very nature of the federal union of states, to each of which is reserved the sovereign right to make its own laws, precludes resort to the Constitution as the means for compelling one state wholly to subordinate its own laws and policy concerning its peculiarly domestic affairs to the laws and policy of others. **When such conflict of interest arises it is for this Court to resolve it by determining how far the full faith and credit clause demands the qualification or denial of rights asserted under the laws of one state, that of the forum, by the public acts and judicial proceedings of another.** See Alaska Packers Asso. v. Industrial Acci. Commission,

294 U.S. 532, 547, 79 L. ed. 1044, 1052, 55 S. Ct. 518; Pacific Employers Ins. Co. v. Industrial Acci. Commission, 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629." (Emphasis supplied)

We submit that the public interest requires a resolution by this Court of the question here presented.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

R. L. CURRY, III
THOS. W. LEIGH
P. O. Box 1671
400 South Grand Street
Monroe, Louisiana 71201

Attorneys for Petitioner

THEUS, GRISHAM, DAVIS & LEIGH
400 South Grand Street
Monroe, Louisiana 71201

OF COUNSEL